

1 ROBERT H. PITTMAN #172154  
County Counsel  
2 MICHAEL A. KING #77014  
Deputy County Counsel  
3 County of Sonoma  
575 Administration Drive, Room 105A  
4 Santa Rosa, California 95403  
Telephone: (707) 565-2421  
5 Facsimile: (707) 565-2624  
E-mail: michael.king@sonoma-county.org

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7 Attorneys for Defendant  
COUNTY OF SONOMA  
8 TENNIS WICK, TYRA HARRINGTON,  
MARK FRANCESCHI, TODD HOFFMAN,  
9 JESSE CABLK and ANDREW SMITH

10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12

13 RONALD CUPP, an individual

**Case No. 4:23-cv-01007**

14 Plaintiff,

15 vs.

**DEFENDANTS' REPLY  
MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS COMPLAINT**

16  
17 COUNTY OF SONOMA, a municipal  
corporation; TENNIS WICK, in his  
18 individual and official capacities;  
TYRA HARRINGTON, in her  
19 individual and official capacities;  
MARK FRANCESCHI, in his  
20 individual and official capacities;  
TODD HOFFMAN, in his individual  
21 and official capacities; JESSE  
CABLK, in his individual and official  
22 capacities; ANDREW SMITH, in his  
individual and official capacities  
23 DOES 1-50, inclusive

Date: 08/17/2023  
Time: 2:00 p.m.  
Courtroom: 6, 2nd Floor  
Judge: Jon S. Tigar

24 Defendants.  
25 \_\_\_\_\_ /

26 **I. Alleged §1983 Violations Are Discrete Acts, Not Continuing Violations**

27 The attempt in the Opposition to characterize the alleged events as somehow  
28 “continuing” in nature, directly contradicts the alleged facts and the actual events.

1 Plaintiff Ronald Cupp became the owner of 4640 Arlington Avenue, Santa Rosa,  
2 California sometime in 2019 and recorded a deed on February 25, 2019. (See Exhibit No.  
3 11, Supplemental Request for Judicial Notice filed herewith). Ronald Cupp is the only  
4 plaintiff in this case. He alleges specific conduct of some of the Defendants on specific  
5 dates which supposedly amount to violations of his civil rights.

6 Plaintiff cites the case of *Nichols v. City of Palm Springs*, 2014 U.S. Dist. LEXIS  
7 197732 (C.D. CA 2014), in his Opposition for some general principles, but ignores the  
8 ruling of the District Court on the issue of the statute of limitations. The Court clearly  
9 stated that the events that took place more than two years before the filing of the  
10 Complaint were not actionable. *Nichols*, 2014 U.S. Dist. LEXIS 197732 \*10. The Court  
11 cited twice the case of *Ward v. Caulk*, 650 F.2d 1144, 1147 (9<sup>th</sup> Circuit 1981) for the  
12 proposition that "[a] continuing violation is occasioned by continuing unlawful acts, *not*  
13 *by continual ill effects from an original violation.*" (Emphasis added) The Ninth Circuit in  
14 *Ward v. Caulk* also held that plaintiff's statutory claims were barred by the limitation  
15 period for filing the actions.

16 While the Court in *Nichols* 2014 U.S. Dist. LEXIS 197732, did not decide all the  
17 limitations of action issues on the motion to dismiss, it was relying upon the alleged  
18 theory of "state created danger" since the plaintiffs were police informants for a lengthy  
19 period of time. The District Court subsequently did grant summary judgment for all  
20 individual defendants. *Nichols v. City of Palm Springs*, 2015 U.S. Dist. LEXIS 190457  
21 (C.D. CA 2015).

22 It should also be noted that the District Court in *Nichols*, 2014 U.S. Dist LEXIS  
23 197732, dismissed the *Monell* claim against the City with leave to amend. Apparently the  
24 Plaintiff in *Nichols* knew that there was no actual policy implicated and did not amend  
25 the *Monell* claim.

26 Plaintiff discusses another case to support the concept of a "continuing violations"  
27 exception to the statute of limitations defense; *Rodriguez v. City of Los Angeles*, 2015  
28 U.S. Dist. LEXIS 190012 (C.D. Cal. 2015) *Rodriguez* is clearly different than the present

1 case since it involved claims regarding the service of a gang injunction at different times  
 2 on different plaintiffs and members of a “class” recognized by the Court. The issuance of  
 3 the gang injunctions was not contested, only the service. There was no administrative  
 4 hearing providing due process such as the one involving Mr. Cupp, nor was there a prior  
 5 lawsuit (*Cupp v. Smith*, Case No. 4:20-cv-03456), raising many of the same claims in the  
 6 same U.S. District as are raised in this case.

7 **II. The Only Systematic Practice Raised in the Complaint is Enforcement**  
 8 **of County Code Against Plaintiff Cupp for His Repeated Code**  
 9 **Violations**

10 While a great many conclusory allegations are raised in the Complaint, and  
 11 Plaintiff attaches some statements from his fellow code violators, the conduct alleged in  
 12 the Complaint clearly shows the step-by-step attempts by the County to obtain  
 13 cooperation from Ronald Cupp to remedy the unpermitted building and zoning code  
 14 violations at 4640 Arlington Ave. Instead of engaging in collaborative efforts to remedy  
 15 the violations, as requested in the original Notice & Orders (Doc #1-1, pp. 22-23 of 89),  
 16 Plaintiff has chosen to deny the existence of the code violations, to ignore the subsequent  
 17 notices (Doc #1, ¶¶37-38, pp. 13-14), to continue to expand the scope of his unpermitted  
 18 use of the property, to contest the violations in the abatement hearing, and to ignore the  
 19 Decision of the Administrative Hearing Officer for months after it was issued. (Doc #13,  
 20 pp. 13-27)

21 **III. Damages Not Recoverable for California Constitutional Violations**

22 Plaintiff’s own authority does not require any detailed analysis by Defendant to  
 23 raise the lack of damages for a due process claim under the California Constitution  
 24 Article 1, §7. In Plaintiff’s case of *Rodriguez v. City of Los Angeles*, 2015 U.S. Dist.  
 25 LEXIS 190012 (C.D. CA 2015), \*\*68-69 held that Plaintiffs may not seek damages for  
 26 California due process claims on the basis of service of the injunctions. “The California  
 27 Supreme Court has ruled that there is no constitutional tort cause of action for damages to  
 28 remedy a violation of due process under the California Constitution,” citing *Katzberg v.*

1 *Regents of Univ. of California*, 29 Cal. 4th 300, 326, (2002). The District Court also cited  
 2 *Brahmana v. Henard*, 2011 U.S. Dist. LEXIS 153567 \*8 (N.D. Cal. 2011)

3 These cases do not present a detailed analysis under *Katzberg*, yet they clearly  
 4 hold that damages are not recoverable under various provisions of the California  
 5 Constitution.

6 **IV. Plaintiff Ignores the Authority Previously Provided in Reply to**  
 7 **Plaintiff's Opposition to County Motion to Dismiss**

8 As fully set out in the Reply Memorandum to Plaintiff's Opposition, Doc #18, pp.  
 9 3-4, the *Younger* Abstention Doctrine applies to State administrative proceedings.

10 For a period of 18 months, Ronald Cupp made significant progress on abating  
 11 conditions at 4640 Arlington Ave, then for some reason stopped further efforts. It is now  
 12 apparent that a State court action will need to be filed to obtain enforcement of the code  
 13 violations, completion of the work to abate the nuisance and violations, and for civil  
 14 penalties, staff costs, and attorney's fees that are outstanding.

15 **V. Defendant Tennis Wick and Tyra Harrington Should Be Dismissed**

16 Plaintiff clarifies in his Opposition that Tennis Wick and Tyra Harrington are  
 17 included in the Complaint only in their capacities as Director and Code Enforcement  
 18 Manager for Permit Sonoma (aka PRMD). Doc #31, p. 9: 4-20; p. 11: 8-13. To the  
 19 extent that they are named solely as "policy-makers", the allegations against them fail for  
 20 the same reasons as the claim under *Monell* fails against the County of Sonoma. See Doc  
 21 #12, pp. 15-16. "A plaintiff must allege facts, not simply conclusions, that show that an  
 22 individual was personally involved in the deprivation of his [or her] civil rights." See  
 23 *Barren v. Harrington*, 152 F.3d 1193, 1194 (9th Cir. 1998).

24 **VI. Plaintiff Should Not Be Allowed to Continue to Waste the Court and**  
 25 **Defendants' Time**

26 In his Opposition, Plaintiff several times alludes to having additional facts and  
 27 "counts" not included in this Complaint filed on March 6, 2023. See Doc #31, p. 12: 13-  
 28 18, p. 19: 15-23. He apparently now wants to add new parties to this Complaint and  
 make other claims that were known to him, yet for some reason left out of the Complaint.

1 These tactics are clear examples of the reasons why this Court can and should exercise its  
2 inherent power to dismiss this matter under the All Writs Act.

3 Dated: June 8, 2023

ROBERT H. PITTMAN, County Counsel

4  
5 By: /s/ Michael A. King  
6 Michael A. King  
7 Attorneys for Defendant  
8 COUNTY OF SONOMA  
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